

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

ESTATE OF GEORGE BERNARD WORRELL, JR.,
Plaintiff,
-vs-
Case No. 4:22-cv-11009-FKB-DRG
District Judge F. Kay Behm
Magistrate Judge: David R. Grand
THANG, INC. and GEORGE CLINTON,
Defendants.

10 The deposition of CARL CAFAGNA, a witness in the
11 above-entitled cause, taken before Suzanne Lynn Bonarek,
12 Certified Shorthand Reporter and Notary Public, via Zoom
13 videoconferencing, on the 18th day of October, 2024
14 commencing at or about 12:03 p.m., pursuant to the Federal
15 Rules of Civil Procedure.

16 APPEARANCES:

DICKINSON WRIGHT, PLLC
2600 West Big Beaver
Suite 300
Troy, Michigan 48084
BY: MR. DANIEL QUICK
Appearing on behalf of Plaintiff

20 SCHENK & BRUETSCH, PLC
21 211 West Fort Street
22 Suite 1410
22 Detroit, Michigan 48226
22 BY: MR. JAMES ALLEN, SR.
22 Appearing on behalf of Defendants

(NOTE: All attendees appearing remotely. Witness sworn in remotely pursuant to agreement.)

	<u>I N D E X</u>	
	<u>WITNESS</u>	<u>PAGE</u>
	CARL CAFAGNA	
3	Examination by Mr. Allen	5
4	Examination by Mr. Quick	30
5		
6		
7	<u>E X H I B I T S</u>	
8	<u>DESIGNATION</u>	<u>DESCRIPTION</u>
9		<u>MARKE</u>
10	Exhibit No. 1 Phonograph Recording Contract	
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 Q And are you generally familiar with the terms and
2 conditions of the existing Collective Bargaining
3 Agreement that Local 5 is under with contracting
4 companies?

5 A There are many agreements to which we would be
6 subject. I am familiar with some, but not all of
7 them.

8 Q Do you have any knowledge of the Collective Bargaining
9 Agreements, the contents of Collective Bargaining
10 Agreements that would have been in effect during the
11 1970's?

12 A No.

13 Q Have you ever seen Collective Bargaining Agreements
14 from the 1970's that Local 5 has with any of the
15 various recording studios in the area?

16 A No, I have not.

17 Q And so you don't have any testimony to offer here
18 today about the contents of what may have been
19 Collective Bargaining Agreements that Local 5 had in
20 the 1970's?

21 A Correct, I do not.

22 Q Did you make any search for any of the Collective
23 Bargaining Agreements that applied -- that would apply
24 to the records that you did produce?

25 A We don't have those here. Those would be stored with

1 the American Federation of Musicians under the
2 particular auspices of John Painting, who is currently
3 serving as the Director of Electronic Media Services.
4 Some of the materials may also be housed at the AFM's
5 west coast office, which has its own separate staff.

6 The policy here is the only CBA's we retain
7 are the ones in which we are the primary
8 representative of the bargaining unit; that is to say,
9 those which pertain specifically to Local 5.

10 Q And are you aware of any of the -- are you aware of
11 the existence of any other policies that may have
12 governed your union members that -- the terms and
13 conditions of your union members back in the 1970's?

14 A I'm not.

15 Q Okay. Is there somebody at Local 5 that would have
16 that information?

17 A Possibly; however, that person is currently out of the
18 country in Italy on vacation.

19 Q And you've done a diligent search of records and you
20 produced this morning 45 pages worth of phonograph
21 recording contract -- or the -- the 45 pages worth of
22 what are captioned Phonograph Recording Contract
23 Blank.

24 Were you able to locate any other records
25 other than the ones that you produced?

1 A Yes, we have other similar records. I sent you every
2 single one that contains the name Bernard Worrell,
3 Junior.

4 Q Okay. And how did you go about the search?

5 A There's a physical file that I've been directed to in
6 the past by one of our staffers, and that is the only
7 place I know that we have this type of information.

8 Q Okay. Does the union provide, typically provide any
9 guidance for union members regarding the ownership of
10 sound recordings?

11 A The guidance we provide is pursuant to the payment of
12 musicians for services rendered. Copyright and
13 intellectual property is, according to my
14 understanding, not a primary concern of the American
15 Federation of Musicians.

16 I'm not confident making a declarative
17 statement for the entire international but I have
18 asked that question of many people, and our primary
19 concern is payment for musicians for services
20 rendered.

21 And we have regularly updated scale wages
22 and benefit requirements under an agreement that is
23 now called the Sound and Recording Labor Agreement,
24 SLRA. And again John Painting is the international
25 body, is the director under which that agreement

1 mischaracterizes the document.

2 Q (Continuing by MR. ALLEN): Well, Mr. Cafagna, do you
3 see where it says dates and hours of employment it
4 says 11:30 to 8:30 p.m.; am I misreading that?

5 A No, I interpreted it the same.

6 MR. QUICK: No, my objection was as to your
7 affirmative statement that Mr. Worrell was paid; where
8 the witness already said that this form has nothing to
9 say about whether or not in fact anybody was paid
10 anything.

11 A Right, it speaks to what they should have been paid.

12 Q (Continuing by MR. ALLEN): Okay. By the employer?

13 MR. QUICK: Objection, asked and answered.

14 A It's my understanding that this local at some point in
15 the past did function as a payroll service. It has
16 not since the mid 1990's. My knowledge of how that
17 payroll service would have functioned during this time
18 is completely nil. The majority of these contracts
19 we're looking at happened during the first seven years
20 of my life.

21 Q (Continuing by MR. ALLEN): And mine as well,
22 Mr. Cafagna. It sounds like we're about the same age.

23 A Right.

24 Q Okay. So if there were payroll records, where would
25 they be?

1 A I'm not sure.

2 Q Do you even know if they still exist?

3 A I don't.

4 Q Is there any way --

5 A I don't know, I don't know whether they do or they
6 don't. I have not found them if they do exist.

7 Q So you don't know whether Mr. Worrell was paid
8 according to any of these late phonograph contract
9 documents?

10 A Not definitively, no.

11 Q Okay. And you don't know whether he was; whether he
12 was or he wasn't?

13 A Correct.

14 I should mention one detail at this point
15 regarding contracts that the AFM would assumedly have
16 access to. Each record label would likely have their
17 own agreement, which could be called a Letter of
18 Acceptance, which would have made those record labels
19 become what we refer to as a signatory to the AFM.

20 And so Westbound Records, Inc. would likely
21 have agreed to separate terms with the AFM for any of
22 this period, and perhaps different terms, during the
23 period than would be the case for, for example, CBS or
24 EMI, Capital Records; any of the other record labels
25 that you may see appear on these contracts.

1 We should not assume that any of them were
2 bound by the exact same terms as any other because
3 each would have signed a separate Letter of Acceptance
4 to become what we call a signatory party to AFM
5 recording contracts.

6 And so one should not assume that a
7 contract under Westbound would be subject to the exact
8 same terms as one that says Capital Records or EMI, or
9 even Thang pursuant to this case.

10 They would -- my assumption is that they
11 would have each had their own specific agreements
12 known as Letters of Acceptance. And that due to the
13 broad period of what you're looking for, each may have
14 had five or more new iterations of their Letter of
15 Acceptance during those years.

16 Q Do those Letters of Acceptance agreements cover the
17 treatment of royalties for sound recordings that are
18 produced according to this Letter of Acceptance
19 agreement?

20 MR. QUICK: In the 1970's or now?

21 Q (Continuing by MR. ALLEN): Well, let's start with
22 now.

23 A The answer is some. Royalties which have to do with
24 what we call new use, and that is a re-broadcast or a
25 re-transmission of a previous existing recording, will

1 be required to pay the musicians a negotiated rate for
2 re-use or possibly for new use of a pre-existing
3 recording. And those payments would be governed under
4 the SLRA.

5 However, many recording contracts have
6 additional stipulations between all parties that may
7 have no bearing and not be pursuant to the AFM SLRA.

8 Q Okay. And you understand that during the period in
9 question in this lawsuit, which I'll represent to you
10 is from the late '60's to the early '80's for the most
11 part, a portion of that period was under a different
12 statutory -- there were different statutory rules
13 regarding the copyrights. Are you aware of that?

14 A I would assume so. Yes, they change with some
15 regularity.

16 Q And are you able to give us any testimony about how
17 royalties would have been treated in any of the
18 contracts for the works at issue here in this lawsuit?

19 A No.

20 MR. QUICK: Form -- thank you for that
21 answer, but just for the record form and foundation,
22 and outside the scope of the subpoena.

23 Q (Continuing by MR. ALLEN): Does Local 5 maintain any
24 records or correspondence related to sound recordings
25 or royalty claims made by Mr. Worrell?